

Date _____

BURNING

EIN:

Key District:

We have completed our consideration of your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Your Articles state you are a religious corporation and organized under the Nonprofit Religious Corporation Law exclusively for religious purposes. Your Articles also state that you support the mission [REDACTED]

1. Providing employment to [REDACTED]
2. Training students at the [REDACTED]
3. Providing administrative services related to sales operations of the [REDACTED]

Your by-laws provide that [REDACTED] shall be your sole member. The member shall approve the Board members, remove board members, approve changes to the Articles, approve any significant change in the business or business purposes of the corporation, and approve any merger, consolidation, dissolution, sale, or transfer of assets. The by-laws provide a restriction on the number of interested persons serving on the board. All directors must be committed to the furtherance of the [REDACTED]. The [REDACTED]. The [REDACTED] and [REDACTED] are [REDACTED] voting directors. The Vice President appointed the initial board. Thereafter, the board is filled by the directors then in office, subject to approval of the Member. The by-laws contain a conflict of interest regarding financial or other interests.

[REDACTED]

Your stated that the [REDACTED] controls your activities and approves financial statements and budgets. Your Board is comprised of officers, directors, and employees of [REDACTED]. [REDACTED] will provide additional funds if needed. The [REDACTED] previously conducted all of your activities.

Your primary activities are the distribution and sale of natural and vegetarian foods. The activities include a [REDACTED] as well as [REDACTED] to other [REDACTED]. Other activities include a [REDACTED] run by [REDACTED]. The [REDACTED] the immediate community. You stated that you previously operated [REDACTED] which ceased operation as of [REDACTED], and the [REDACTED]

Your services are available to the general public and are competitively priced. Advertising is primarily through the Yellow Pages, flyers [REDACTED], and in the local paper. You use paid employees to provide your services. You provided an advertisement that listed of prices for [REDACTED] (for example: [REDACTED] and a list of items carried in the store (for example: [REDACTED]). You also provided the following regarding employees and compensation:

[REDACTED]	full time employees, students.
[REDACTED]	\$ [REDACTED] Total Compensation
[REDACTED]	part time students, part time worker
[REDACTED]	\$ [REDACTED] Total Compensation
[REDACTED]	full time workers
[REDACTED]	\$ [REDACTED] Total Compensation

You stated that your businesses operate/operated under the following names:

[REDACTED]
[REDACTED]
[REDACTED] (wholesale)
[REDACTED]

You stated your activities complement the mission of the [REDACTED] by:

1. Promoting "whole foods for the whole person" - providing a complete selection of natural foods, fresh produce, and whole grain baked goods,

- [REDACTED]
2. Promoting vegetarian meat substitutes and other health-ful alternatives in keeping with the lacto-ovo vegetarian practices of [REDACTED]
 3. Serving the [REDACTED]
 4. Providing a work environment [REDACTED] and [REDACTED]

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations which are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described in such section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e) of the regulations states that an organization may be exempt under section 501(c)(3) even though it operates a trade or business as a substantial part of its activities if the operation of such trade or business is in furtherance of the organization's exempt purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the facts and circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Rev. Rul. 74-575, 1974-2 C.B. 161, held that a nonprofit organization that supervises the preparation and inspection of food products prepared commercially in a particular locality to insure the compliance of individual members with the tenets and dictates of a particular religion was held to be accomplishing a charitable purpose by engaging in an activity that advances religion and thus the organization was exempt under IRC

[REDACTED]

501(c) (3) .

Rev. Rul. 58-194, 1958-1 C.B. 240 held a university bookstore and other organizations with school related functions, such as selling school supplies or operating a cafeteria, promote educational purposes where they are operated for the convenience of students and faculty.

In Living Faith, Inc. v. Commissioner, T.C. Memo 1990-484 (1990), affirmed 950 F.2d. 365 (1991), the court denied the organization's application for recognition of tax-exemption under section 501(c) (3) of an organization that operated a vegetarian restaurant and health food store open to the public and with competitive prices. The organization requires there be Seventh-day Adventist management and a good working relationship with the local Seventh-day Adventist Church. The organization was not owned or controlled by the church.

The court in Living Faith found that Living Faith operates for a substantial commercial purpose based upon the following: meal and food prices are set at market rates, the businesses are open to the public, promotional material and commercial catch phrases are used to enhance sales, and the businesses are in competition with commercial firms. The court also stated that the literature disseminated about the Seventh-day Adventist religion and after-hours Bible reading was "clearly peripheral and incidental to the substantial commercial purpose" of its restaurants and health food stores."

The issue is whether you are "operated exclusively" for exempt purposes within the meaning of section 501(c) (3). An organization is not "operated exclusively" for exempt purposes "if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." Better Business Bureau v. United States, 326 U.S. 279 (1945).

Here, you are conducting a [REDACTED]. Your [REDACTED] [REDACTED] are open to the public and you distribute [REDACTED] to commercial stores. Your products are sold at competitive prices. You operate a [REDACTED] at competitive prices that is open to the public.

You can be distinguished from the organization in Rev. Rul. 74-574, supra, in that you were not formed to insure compliance with the tenets of a particular [REDACTED] in that you not only operate a [REDACTED] open to the public, you also distributes [REDACTED] to other commercial establishment and operate a [REDACTED] open to the public. You may also be distinguished from [REDACTED] in Rev. Rul. 58-194, supra,

[REDACTED]

as you are not promoting educational purposes or operated for the convenience of the students and faculty because you are open to the public and conduct activities that do not further education. You list "[REDACTED]" as a major activity. Providing students with employment does not further educational or any other exempt purpose.

Based upon the facts, you are similar to the organization in Living Faith, Inc., supra, in that you are operating a [REDACTED] open to the public, [REDACTED] distribution operation, and a [REDACTED] that is open to the public.

The operation of the [REDACTED] are independent of an educational purpose or a [REDACTED]. It cannot be said that you are "operated exclusively" for religious purposes. Also see Schoger Foundation v. Commissioner, 76 T.C. 380, 386 (1981). You are in direct competition with commercial entities which is a nonexempt commercial purpose. See B.S.W. Group, Inc. v. Commissioner, 70 T.C. at 356-358. The training of students is incidental to the commercial purposes of the activities. See Riker v. Commissioner, 244 F.2d 200 (9th Cir. 1957).

While the fact that an organization's primary activity may constitute a trade or business will not, of itself, disqualify it from classification under section 501(c)(3) of the Code, the trade or business must further or accomplish an exempt purpose. See section 1.501(c)(3)-1(c)(1) of the regulation and Dumaine Farms v. Commissioner, 73 T.C. 650 (1980). If one of the activity's purposes is substantial and nonexempt (e.g. commercial), the organization will be denied exempt status under section 501(c)(3), even if its activities furthers and exempt (e.g. religious or educational) purpose. See Schoger Found, supra. The operation of the [REDACTED] are commercial activities in competition with commercial businesses. The use of advertising through the yellow pages and local paper is also indicative of a commercial operation. Being in competition with commercial entities is evidence of a non-exempt commercial purpose.

You have failed to establish that you are operated exclusively for section 501(c)(3) purposes as your activities are operated for commercial non-exempt purposes. See Better Business Bureau, supra. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code. You are required to file federal income tax returns on Form 1120. Contributions to you are not deductible under section 170 of the Code.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

You will expedite our receipt of your reply by using the following address on the envelope:

[REDACTED]

[REDACTED] b6 b7C

[REDACTED]